

ORIGINAL
REVISED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable YVONNE GONZALEZ ROGERS, Judge

IN RE: SOCIAL MEDIA)	Further Case Management
ADOLESCENT ADDICTION/)	
PERSONAL INJURY PRODUCTS)	
LIABILITY LITIGATION)	NO. C 22-03047 YGR
)	
)	
ALL ACTIONS)	Pages 1 - 34
)	
_____)	Oakland, California
		Wednesday, December 13, 2023

REPORTER'S TRANSCRIPT OF PROCEEDINGS

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(Appearances continued next page)

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Megan O'Neill, Deputy Attorney General (CA)
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Wednesday, December 13, 2023

10:31 a.m.

P R O C E E D I N G S

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THE COURT: This is in MDL number 22-3047.

As we've done in the past, there will be no -- there won't be some global set of appearances. We have your attorney sign-in sheet for efficiency purposes.

And to the extent you're speaking, then you can state your appearance when you come to the mic.

All right. So who is going to lead for each side today?

Ms. Hazam, I see you rising.

MS. HAZAM: Your Honor, Lexie Hazam for plaintiffs.

I'm happy to tee things up. I may have colleagues who speak to particular issues.

THE COURT: Of course.

MS. SIMONSEN: Good morning, Your Honor. Ashley Simonsen, Covington & Burling, for the Meta defendants.

I may have a couple of colleagues also jump in on a few points, but otherwise, I'll be leading.

THE COURT: Sure. Good morning.

So as I understand it, we're all trying to get coordinated here. You're meeting with Judge Kang tomorrow, correct?

And you've already met with Judge Kuhl, so things are proceeding along.

1 I did read your statement I received while I was on the
2 bench this morning. I guess you have a stipulation that I'm
3 assuming is consistent with the statement that I'd received.

4 Is that right?

5 **MS. SIMONSEN:** It is -- it is, Your Honor.

6 There is one modification to that stipulation that the
7 parties have discussed and would like to propose to Your
8 Honor.

9 **THE COURT:** Okay. Go ahead.

10 **MS. SIMONSEN:** So --

11 **THE COURT:** I'm looking at Docket 477.

12 **MS. SIMONSEN:** That's correct, Your Honor.

13 **THE COURT:** Okay.

14 **MS. SIMONSEN:** The final paragraph of that
15 stipulation, which is numbered Paragraph 8.

16 **THE COURT:** Um-hmm, yes.

17 **MS. SIMONSEN:** The parties would like to add to the
18 end of that paragraph language stating that the deadline for
19 the track one, two, and four motions to dismiss shall be
20 extended to December 22nd.

21 And I'm happy to provide background on that for Your Honor
22 if it would be helpful.

23 **THE COURT:** Okay. So currently, you want to move the
24 deadline of December 18th to December 22nd.

25 **MS. SIMONSEN:** Correct.

1 **THE COURT:** Okay.

2 That's fine with me.

3 **MS. SIMONSEN:** Thank you, Your Honor.

4 **THE COURT:** All right.

5 So in terms of the stip, like I said, I was on the bench
6 when it came in. Let's just go through them. So I'm going to
7 read them with you. In case I have any questions, we can deal
8 with it then.

9 So you've agreed -- you've stipulated that the plaintiffs
10 shall file a second amended master complaint withdrawing the
11 identified counts, which are count six, count eleven, count
12 thirteen, and count fifteen as to all defendants, count twelve
13 and count fourteen as to all defendants except Meta, by no
14 later than Friday February -- I mean, Friday, December 15th.

15 Once that is filed, the counts asserted -- those same
16 counts are deemed withdrawn by definition in the short-form
17 complaints. And if there are any plaintiffs who want to
18 reassert those, they must do so by no later than Tuesday,
19 January 2nd. Okay.

20 All of that's fine so far.

21 Now, with respect to number four, it says the parties
22 shall submit a revised proposed short-form complaint that
23 removes the identifying counts from the list of counts
24 plaintiffs may select when completing short-form complaints
25 along with a revised proposed short-form complaint

1 implementation order no later than January 2nd.

2 Does that mean that they all have to refile short-form
3 complaints? Or let's say you've got a plaintiff who isn't
4 going to reassert those claims. Can they just stand on their
5 complaint?

6 **MS. SIMONSEN:** Yes, that's --

7 **MS. HAZAM:** Yes.

8 **MS. SIMONSEN:** -- our understanding.

9 **MS. HAZAM:** Yes.

10 **THE COURT:** Okay. So they can stand on their
11 complaint. Okay.

12 So if not reasserting, those individual plaintiffs can
13 stand on prior short-form complaint.

14 Correct?

15 **MS. HAZAM:** Yes.

16 **MS. SIMONSEN:** Correct.

17 **THE COURT:** I'm sorry. I have someone new at the
18 mic.

19 **MS. O'NEILL:** Thank you, Your Honor. Megan O'Neill
20 on behalf of the states.

21 If I may we just wanted to clarify whether the deadline
22 for the State Attorney General motion to dismiss would also be
23 moved. We were not part of these discussions between the
24 private plaintiffs and defendants, so just wanted to clarify
25 that.

1 **THE COURT:** So -- so -- hold on. You need speak
2 louder.

3 **MS. O'NEILL:** Sure.

4 **THE COURT:** And you can fix that mic, if that helps.

5 **MS. O'NEILL:** Thank you, Your Honor.

6 **THE COURT:** That's much better. Thank you.

7 So as I understand it, the deadline extension to
8 December 22nd was for tracks one, two, and four, which are
9 defined as the State AG complaint is track one.

10 **MS. O'NEILL:** That is my understanding regarding
11 track one including the State Attorney General claims. But we
12 were not involved in these discussions regarding the
13 stipulation or the changes to the dates so just --

14 **THE COURT:** Do you want to extra days?

15 **MS. O'NEILL:** We would -- if the deadline for the
16 defendants motion to dismiss is moved four days, we would also
17 seek four extra days for our response.

18 **THE COURT:** Well, I'm not going to change the reply
19 date.

20 So what is your view on that?

21 **MS. SIMONSEN:** I believe we only have two weeks for a
22 reply as it stands. I would submit, Your Honor, that the
23 States do have until February -- I believe it's 5th or 6th --
24 yeah, 5th to file their opposition, which is quite a long
25 period of time. The -- but, you know, we -- perhaps we could

1 extend the reply deadlines by two days or four days to -- to
2 match the requested extension.

3 We are asking for the extension of the motion to dismiss
4 deadline, Your Honor, to accommodate plaintiffs' request to
5 incorporate allegations from other State Attorney General
6 complaints. That was a request that was just made yesterday.

7 And since they won't be filing their amended complaint
8 until Friday, we simply --

9 (Simultaneous colloquy.)

10 **MS. SIMONSEN:** -- the time.

11 **THE COURT:** -- but the State AG's complaint isn't
12 changing, is it?

13 **MS. SIMONSEN:** It isn't. But the motion to dismiss
14 the State AG complaint also moves to dismiss counts seven
15 through nine of the personal injury plaintiffs' master
16 complaint and the allegations against Mark Zuckerberg if I'm
17 recalling correctly.

18 **THE COURT:** Well, that's a separate motion.

19 **MS. SIMONSEN:** And the reason -- the reason that I
20 mention that, Your Honor, is that the allegations that the
21 plaintiffs are proposing to incorporate by reference into
22 their master complaint are pertinent to counts seven through
23 nine of the master complaint and the alleged misrepresentation
24 claim against Mr. Zuckerberg.

25 And so if we do not receive that master complaint until

1 Friday, we will need additional time beyond the 18th to
2 prepare our motion to dismiss and to adapt it as necessary in
3 light of any new allegations in the master complaint.

4 We are only asking for four days and, again, would submit
5 with a February 6th or 5th deadline to file the opposition, we
6 think that does provide the State -- the States with plenty of
7 time to respond.

8 **THE COURT:** A response?

9 **MS. O'NEILL:** Your Honor, we don't object in any way
10 to the defendants having the additional time to incorporate
11 anything they need to incorporate. We would just ask that we
12 be given a commensurate amount of time to reply.

13 **THE COURT:** So why can't you respond between
14 December 22nd and February 5th?

15 **MS. O'NEILL:** Your Honor, if that is what the Court
16 desires, we can respond. We would just request that the dates
17 be moved, particularly given that we were not part of these
18 discussions.

19 But, Your Honor, we would -- we will be able to respond if
20 necessary.

21 **THE COURT:** Mr. Warren.

22 **MR. WARREN:** Good morning, Your Honor.

23 Just wanted to say that the only reason the States weren't
24 involved in these discussions is 'cause they transpired about
25 six minutes ago, so we really did mean to include them and

1 don't mean to ever leave them out of these conversations.

2 We -- the -- we have yet to receive an unredacted version
3 of the -- the complaint filed by the State of New Mexico,
4 which leaves us in a bit of a time crunch to meet the deadline
5 of Friday for filing an amended master complaint.

6 But I think we've worked it out such that Meta has agreed
7 to provide that to us later today, which should allow us to
8 file that on Friday. They've asked for a modest extension and
9 we've said okay to that, so -- I just wanted to provide that
10 additional context.

11 **THE COURT:** I'm going to -- I'd like you to stay on
12 this schedule. So if something happens and you are getting to
13 the end of January and you think you can't do it, then let me
14 know.

15 But otherwise, we're going to stick to the schedule.

16 **MS. O'NEILL:** Understood, Your Honor. Thank you.

17 **THE COURT:** Thank you.

18 Okay.

19 Then we get to Paragraph 5, and what this does is then
20 bifurcates the briefing, as I understand it, to allow briefing
21 on those dismissed claims to proceed if any individual -- if
22 any individuals reassert them, right?

23 **MS. SIMONSEN:** That's correct, Your Honor.

24 **THE COURT:** Okay.

25 Mr. Warren, do you have any indication that individual

1 defendants are going to -- or individual plaintiffs are going
2 to reassert those claims?

3 **MR. WARREN:** Yes, Your Honor. I believe there are
4 some individual plaintiffs that would.

5 **THE COURT:** Approximately how many?

6 **MR. WARREN:** I believe there are only -- less than
7 two dozen claims in the entire MDL that at this time reassert
8 any of claims 11 through 15 in combination. And I -- I can't
9 say which -- which of those plaintiffs would reassert which,
10 but I am under the impression that at least some would
11 reassert some.

12 **THE COURT:** Okay. So what I am going to need is --
13 maybe liaison counsel can file a notice on the docket so that
14 I know which of the individual complaints -- which cases have
15 reasserted those claims.

16 And so -- so they've got a deadline of January 2nd, so if
17 I could have liaison counsel file by January 8th just a list
18 of the case numbers identifying the additional claims that are
19 there, because then the question is -- and all of those
20 individual plaintiffs are going to have to coordinate because
21 I am going to need a consolidated opposition, not how -- two
22 dozen oppositions.

23 **MR. WARREN:** Yes, Your Honor. That -- that deadline
24 and -- and that process makes perfect sense to us. I do
25 envision that MDL coleads will remain involved even though

1 these claims will be dropping out of the master complaint. We
2 can continue to serve the -- the role of -- of attempting to
3 centralize in coordinating.

4 **THE COURT:** Okay.

5 So it's one -- consolidated motion, consolidated
6 opposition, consolidated reply.

7 **MS. SIMONSEN:** Yes.

8 **MR. WARREN:** Yes, Your Honor.

9 **THE COURT:** Okay.

10 All right. And then -- and then eight is fine, and we've
11 talked about a change to that.

12 Okay. All right. Anything else, then, on this particular
13 briefing?

14 **MS. SIMONSEN:** Nothing from the defendants, Your
15 Honor. Thank you.

16 **MR. WARREN:** No, Your Honor. Thank you.

17 **THE COURT:** Okay.

18 The stipulation's accepted, but I'm going to take the --
19 I'll take your language on the proposed order and pop it into
20 my own order with these changes that we've discussed here
21 today.

22 **MS. SIMONSEN:** Thank you, Your Honor.

23 **THE COURT:** Okay.

24 And then I saw that everyone agrees to an amendment --
25 this is on page 14 of 24 of the statement.

1 So the plaintiffs propose to amend the existing master to
2 add a single paragraph incorporating certain unsealed
3 paragraphs of the State Attorneys' General complaint, and Meta
4 consents to the amendment as proposed.

5 Is that changed?

6 **MR. WARREN:** Modestly, it has, in -- insofar as we --
7 the plaintiffs have also proposed to Meta that we incorporate
8 by reference certain allegations of the State of New Mexico's
9 complaint.

10 This is the one that we have yet to see an unredacted copy
11 of, so we're negotiating how to sort that out. It may be --
12 and I say this before having had an opportunity to even meet
13 and confer with my colleagues on the other side about it --
14 that we also seek to incorporate by reference certain
15 allegations in the State of Utah's complaint against TikTok.
16 We just received a copy that I believe within the last 24
17 hours.

18 And it would be -- you know, I don't want to say anything
19 really to Your Honor, but I did want to flag that that we
20 intend to raise that with counsel for TikTok.

21 **THE COURT:** Okay. And where am I going to have on --
22 so what are you going to do in order that I know and that I
23 have in the master docket these allegations?

24 Because if you're stipulating by reference, I don't want
25 to be going all over multiple Dockets looking for the

operative language.

MR. WARREN: Of course. Yes, Your Honor.

We would attach those as exhibits that -- the complaints that we're referencing.

We also intend to include this new paragraph with a -- a special numbering so that it doesn't throw off all the rest of the numbering and, therefore, make Your Honor's prior orders sort of difficult to comprehend.

So we would just add the letter "A" after a certain numbered paragraph so that we can just literally insert it in and then add the other complaints to the -- to the back as exhibits and try to make it as easy as possible.

THE COURT: Okay.

MS. SIMONSEN: Your Honor, and that's acceptable to the defendants.

The Meta defendants have consented to the amendment that the plaintiffs wish to make with respect to incorporating by reference allegations from the multi-State AG complaint. We simply have yet to meet and confer on the allegations they'd like to incorporate from the New Mexico complaint. But we're prepare to do that promptly so that they can get something on file by Friday that's agreed upon.

THE COURT: Okay.

And do I have counsel for TikTok?

MR. DRAKE: Yes. Good morning, Your Honor. Geoffrey

1 Drake, King & Spalding, for TikTok.

2 **THE COURT:** Good morning.

3 **MR. DRAKE:** We'll meet and confer with Mr. Warren
4 about that. It's the first I'm hearing of it, so I'm sure we
5 can talk about it after -- after today's hearing.

6 **THE COURT:** Okay. Terrific.

7 **MR. DRAKE:** Thank you.

8 **THE COURT:** All right. So I think those are all of
9 the issues with respect to the master complaint, right?

10 **MS. SIMONSEN:** Yes, Your Honor.

11 **MR. WARREN:** Yes.

12 **THE COURT:** Okay.

13 In terms of the individual fact sheets, I understand
14 you're still coordinating with Judge Kuhl on that issue.

15 **MR. WARREN:** I'll throw in a friend for that one.
16 Thank you, Your Honor.

17 **MS. McNAB:** Yes, Your Honor. Kelly McNab on behalf
18 of the individual plaintiffs.

19 We have recent developments on the -- both plaintiff fact
20 sheet and another -- I will call bucket of orders related to
21 the fact sheet which we're calling user account information
22 forms.

23 It's a series of -- of processes so that both parties
24 understand which accounts we're referring to for each
25 plaintiff.

1 Those have -- Judge Kuhl just recently issued an order on
2 the one dispute that was on the user account information form.
3 So as of I believe it was yesterday, those have been submitted
4 for Judge Kuhl's review. And once they are entered in the
5 JCCP, we intend to adopt in the MDL making the necessary
6 changes, changing captions, things likes that.

7 There -- there are no substantive issues, and we've
8 already exchanged drafts of those orders with each other so we
9 will be ready to file those as soon as Judge Kuhl enters them
10 in the JCCP.

11 **MR. HALPERIN:** Good morning, Your Honor. Greg
12 Halperin from Covington & Burling for the Meta defendants.
13 That's correct from the defendant's perspective. The one
14 outstanding issue is to convert things like the California
15 Code of Civil Procedure into the federal rules and things like
16 that, but I suspect the parties can work that out pretty
17 promptly upon issuance in the JCCP.

18 **THE COURT:** Okay.

19 All right.

20 So it sounds like at this point, there's nothing for me to
21 do on the fact sheets, right?

22 **MS. McNAB:** Correct, Your Honor.

23 **THE COURT:** Okay. Terrific. Thanks for the update.

24 Thank you, Mr. Halperin.

25 Okay. There are a number of issues with respect to

1 discovery that it seems have disappeared and/or are in a sense
2 kind of morphed in light of my conference with Judge Kuhl
3 and -- and current developments.

4 I understand that you are all meeting with Judge Kang
5 tomorrow, and so I'm just going to leave it to him to address
6 everything in the first instance. And then if there are
7 issues, you can come back to me. But he's incredibly capable,
8 and we're incredibly lucky to have him working with us on this
9 MDL.

10 He -- I've introduced him to Judge Kuhl, so there's line
11 of communication with him and Judge Kuhl as well, so the three
12 of us will be working -- I would say we all have our own
13 realms, and so we'd like to operate in our own realms and just
14 coordinate with each other.

15 I think we're all capable of doing these things, so -- is
16 there anything that you want to raise right now?

17 **MS. SIMONSEN:** No, Your Honor.

18 **MS. HAZAM:** Not on behalf of plaintiffs, Your Honor.

19 **THE COURT:** That's -- so just remember this moment.

20 Thank you. Okay.

21 One thing that he would like for you to do, though, in
22 light of recent developments, have you -- have you sent him or
23 filed an annotated agenda or CMC statement so he knows where
24 everything is?

25 **MS. SIMONSEN:** We did send him -- or at he at least

1 referred to in his first order a letter that we had previously
2 prepared for Magistrate Judge Cisneros outlining the status of
3 all outstanding orders and disputes.

4 And then since that time, just on Monday, we submitted an
5 update regarding the preservation order negotiations between
6 the parties.

7 We have not submitted an annotated version of any case
8 management statements submitted in this MDL but would be glad
9 to do so.

10 **THE COURT:** I think that to the extent that you can
11 all meet and confer today and just have -- if it's nothing
12 else, a short agenda, or you could even take the case
13 management statement that you had for me where -- where you
14 indicated that there were all these things that needed to
15 happen but the landscape's changed and send him something
16 that's updated so he can prepare for tomorrow and be in a
17 better position to address your issues.

18 I think he would find that very helpful so if you will do
19 that.

20 **MS. HAZAM:** We'd be pleased to do so, Your Honor.

21 There was also one additional issues that the parties
22 alerted to him -- him to in a filing on Monday, so we'll
23 include that as part of the agenda also.

24 **THE COURT:** Okay. Great.

25 Okay. So then there's -- there are just -- seems to me on

1 my list, there are a couple of motion practice issues to deal
2 with that are left here, defendants' request on causation.
3 And then I understand -- I haven't looked at it; it's been a
4 very busy week -- defendants filed a motion for certification
5 of interlocutory appeal. So let's talk about briefing on
6 those two issues.

7 Okay. And -- all right. I have -- go ahead. Ms. Hazam I
8 have for the plaintiffs.

9 **MR. SEEGER:** Chris Seeger for plaintiffs.

10 **THE COURT:** And Mr. Seeger.

11 And then for the defense.

12 **MR. SCHMIDT:** Good morning. Paul Schmidt for Meta.

13 **THE COURT:** Mr. Schmidt, good morning.

14 **MR. SCHMIDT:** Good morning.

15 **THE COURT:** Mr. Schmidt, let's start with you.

16 **MR. SCHMIDT:** Okay. Think on the causation -- let me
17 start actually with the interlocutory brief. We did try to be
18 targeted in that brief in the issues we presented.

19 Obviously plaintiffs will respond to those issues subject
20 to Your Honor's guidance.

21 We have not requested hearing -- what Your Honor set the
22 last hearing a stay of discovery in that brief. We think
23 we've identified issues that are subject for -- that are
24 appropriate for interlocutory review in terms of being
25 susceptible to different outcomes subject to reasonable

1 disagreement and obviously integral to how the case proceeds.

2 But we did make the judgment not to seek a stay of
3 discovery having Your Honor's guidance. If the Ninth Circuit
4 were to take it up, we would want to look at that question at
5 that point. But we made the decision at this point not to do
6 that and to focus on just justifying what we believe is a --
7 is really strong case for interlocutory review.

8 **THE COURT:** So can I ask -- and, again, I've not yet
9 looked at it at all.

10 Would you address the issue that we still have, you know,
11 three more different rounds of briefing in this action. And I
12 don't know how I'm going to rule, but if you lose on any of
13 those rounds, isn't it inefficient for you -- because you may
14 want interlocutory appeal on those, too.

15 Isn't it more efficient to wait the six or nine months to
16 figure out where the legal landscape is in the context of the
17 whole case before you seek such a review?

18 **MR. SCHMIDT:** We have seen it the opposite way in
19 terms of obviously as we brief issues in the future, we'll be
20 guided by what Your Honor's already addressed, including on
21 Section 230.

22 We'll preserve issues where we lost, but we're obviously
23 going to tailor arguments to how Your Honor's ruled. So given
24 the length of time that interlocutory review can take, we
25 thought it made sense to file it sooner rather than later.

1 And we also see the issues on which we're seeking review
2 as issues that the Court has pretty clearly spoken on that we
3 would expect, subject to us making different arguments in the
4 different cases, would carry forward.

5 That was our thinking, that it's not going to be -- the
6 issues we flagged are not going to be substantially impacted
7 by future rulings Your Honor issues, unless Your Honor sees
8 new things that causes the Court to rethink or they just apply
9 differently in the context of the different settings.

10 But as to the personal injury cases, we think they're ripe
11 fully, and that's what we focused on, the issues that are
12 ripe.

13 **MS. HAZAM:** Your Honor, if I may.

14 Your Honor has articulated a concern that we have with
15 regards to this matter being heard now. There are additional
16 rounds of challenges to the pleadings. They may involve
17 additional parties -- the school district plaintiffs, the
18 State AG's -- that raise similar issues.

19 We do not believe that it is at all efficient to be having
20 this request for an interlocutory appeal heard now and believe
21 that it should be held in abeyance until the pleadings are
22 settled.

23 **MS. O'NEILL:** Your Honor, Megan O'Neill again on
24 behalf of the States.

25 I don't have much to add beyond stating that we do support

1 this position that Ms. Hazam has just --

2 **THE COURT:** Okay.

3 **MS. O'NEILL:** -- just stated.

4 **THE COURT:** I'm sorry, but I am going to have -- you
5 going to have to speak with a little more --

6 **MS. O'NEILL:** I'm sorry.

7 **THE COURT:** How about we say a little more
8 confidence?

9 **MS. O'NEILL:** Thank you, Your Honor.

10 Again, Megan O'Neill on behalf of the States.

11 I don't have much to say beyond just reiterating what
12 Ms. Hazam has just said. The States join in in that position.

13 **THE COURT:** Okay.

14 **MR. SCHMIDT:** May I say one more thing on it just to
15 make it a little more concrete on our side?

16 **THE COURT:** Sure.

17 **MR. SCHMIDT:** We -- as I said at the beginning, we
18 tried to focus on issues that we think are squarely presented
19 by Your Honor's rulings. And where we think there's the most
20 grounds for -- for disagreement, the most grounds for meeting
21 the interlocutory review standard.

22 To take of those examples, we focused on the Court's
23 ruling on whether they can proceed on a failure to warn claim.
24 That's right now in terms of the Court's ruling, the Court
25 spoke to that at the last hearing, that's something that we

1 think will impact discovery where future -- where early
2 guidance on that issue rather than later guidance on that
3 issue is really, really meaningful.

4 We're not freezing the rest of the case as we go through
5 this motions practice. The plaintiffs have now started
6 serving targeted discovery. In those circumstances, we think
7 it does make sense to pursue interlocutory review on that
8 issue now.

9 A similar example is we've -- we've raised the product
10 liability issue, whether these services can be treated as
11 products, an issue I think that the Court's decision
12 recognizes is somewhat novel in terms of the case law out
13 there.

14 That's an issue that I don't know if it's going to be
15 radically reshaped by subsequent briefing. It could have a
16 material impact on how the cases progressed when we find
17 ourselves now in a -- in a context where discovery can
18 progress.

19 **MS. HAZAM:** Your Honor, to respond to that,
20 defendants' request for certification is wide-ranging. It
21 covers essentially the entire scope of Your Honor's order, so
22 it is not limited to failure to warn.

23 It essentially seeks certification of Your Honor's rulings
24 regards -- with regards to Section 230 across the board. The
25 same as to the First Amendment rulings and the same as to the

1 product liability rulings.

2 These are issues that will come up in the future briefing
3 through plaintiffs who are raising different causes of action
4 than the causes of action raised by the personal injury
5 plaintiffs.

6 These are plaintiffs who haven't been heard yet on those
7 issues. Defendants are not seeking to have discovery stayed.
8 We agree on that much. We do not believe it should be. But
9 if discovery is proceeding as of now, then we think it would
10 be efficient for these issues to be considered for
11 certification once the pleadings are settled and all others
12 have weighed in.

13 **MS. O'NEILL:** Nothing further to add, Your Honor.

14 **THE COURT:** All right.

15 Okay. So you filed yesterday --

16 **MR. SCHMIDT:** Yes, Your Honor.

17 **THE COURT:** So if you filed yesterday, then the
18 opposition is due on the 26th and the reply on the 2nd?

19 **MS. HAZAM:** That would be the default rule, Your
20 Honor.

21 **THE COURT:** And do you all want to change that?

22 **MS. HAZAM:** If we are going to proceed with briefing
23 we would like that, so plaintiffs would request a deadline for
24 an opposition that would fall after the holidays.

25 **THE COURT:** Is there an objection?

1 **MR. SCHMIDT:** There's no objection, Your Honor.

2 **THE COURT:** Okay.

3 When would you like --

4 **MS. HAZAM:** If Your Honor wished us to have this
5 matter heard at the January status conference, then our
6 suggestion would be for the opposition to be due on
7 January 9th, and we would suggest that any reply from
8 defendants be due ten days later, the 19th, which would have
9 the briefing completed a week prior to that hearing.

10 If Your Honor wants this to be heard on an alternative
11 date, we can adjust accordingly.

12 **THE COURT:** Well, I don't know that I'll be ready to
13 rule, but certainly -- I mean, if -- if that schedule's
14 agreeable, I certainly will have time to read the briefs.

15 I will be in trial so, like I said, I'm not sure that I'll
16 have anything ready for you, but I certainly could take
17 argument.

18 **MR. SCHMIDT:** Recognizing the holidays, that schedule
19 is agreeable to us, Your Honor.

20 **THE COURT:** Okay.

21 **MS. O'NEILL:** And, Your Honor, excuse me.

22 If I may, the States would like to reserve the right to
23 respond to the motion as well to the extent that it could
24 affect our claims procedurally. And we'd be amenable to
25 responding simultaneously with plaintiffs.

1 **THE COURT:** That's fine.

2 **MS. O'NEILL:** Thank you.

3 **THE COURT:** Okay.

4 So oppositions on the 9th, reply on the 19th, and it will
5 be set for hearing on the 26th.

6 Okay. And then there's an issue with respect -- that was
7 raised with respect to causation?

8 **MR. SCHMIDT:** Yes, Your Honor.

9 This is a little bit of an odd issue. We had a good bit
10 of conferral leading up to the CMC statement on this issue,
11 including -- in terms of how much we would address this issue
12 in the CMC statement in terms of the parties having time to
13 address the issue. It ultimately resulted in, I think,
14 productive alignment between the parties in terms of --
15 obviously subject to Your Honor's questions, we wanted to put
16 this issue in front of Your Honor in just the most general way
17 possible but having fleshed out the issues between the sides,
18 so that if it's agreeable again to the Court, we could brief
19 it on January 15th in simultaneous briefs.

20 **THE COURT:** And what do you mean by that?

21 **MR. SCHMIDT:** In terms of the briefing or in terms of
22 issue?

23 **THE COURT:** Both.

24 **MR. SCHMIDT:** In terms of the briefing, it would
25 be -- we have already given details -- position to the

1 plaintiffs on what we're seeking and what our rationale for it
2 is. And we would obviously update that, but both parties
3 would simultaneously submit a brief to the Court on the 15th
4 that would contain our proposal and plaintiffs' opposition to
5 that proposal.

6 Our proposal, which, again, the parties have agreed that
7 subject to Your Honor's questions, we're not going to dive
8 into it in terms of arguing it now, but our proposal, which
9 they oppose, is that we don't limit discovery now, but we find
10 a way to get an early resolution of the question as to whether
11 they can introduce under rule 702 reliable expert testimony
12 supporting the general causation element of their claims.

13 And what we were guided by was -- was hearing Your Honor
14 at the last hearing saying discovery will be before Judge
15 Kang. Your Honor will address legal issues. We're not
16 seeking to limit discovery on this basis. We're seeking to
17 put a legal issue in front of the Court at an earlier time.

18 **THE COURT:** So I don't even have pleadings settled
19 and you want to bring what's effectively a *Daubert* motion
20 without any plaintiff expert reports?

21 **MR. SCHMIDT:** No, it would -- it would set forth the
22 schedule for that where that would just occur earlier in the
23 litigation than if we went fully through the individual cases
24 to the point of trial, but it would --

25 **THE COURT:** -- said to me just a moment ago that you

1 believe that they would be precluded to -- precluded in
2 introducing testimony under 702. And 702 concerns expert
3 testimony.

4 **MR. SCHMIDT:** Yes, so what we would be proposing
5 would be an early extra schedule on this one issue following
6 the chance for them to conduct discovery. And then we would
7 be able to present that to the Court on an earlier track than
8 if we lumped it in with everything else in the context of case
9 moving towards trial.

10 **THE COURT:** So typically, expert discovery doesn't
11 start until we have fact discovery.

12 **MR. SCHMIDT:** Um-hmm.

13 **THE COURT:** And you want them to -- to provide expert
14 reports before fact discovery is even closed?

15 **MR. SCHMIDT:** Before fact discovery potentially is
16 closed but with the opportunity to conduct fact discovery on
17 the issues relevant to general causation. This is something
18 that a number of other courts have done actually in a more
19 phased way with limited initial discovery, which is not what
20 we're proposing.

21 But that's -- that's what we'd like the opportunity to set
22 forth for Your Honor in a brief to be filed on the 15th.

23 **THE COURT:** Mr. Seeger.

24 **MR. SEEGER:** Yeah. Judge, Mr. Schmidt is right, that
25 we agreed not to try to debate this -- we want to answer your

1 questions. I can assure you, you will get a full-throated
2 response in opposition to that proposal.

3 I don't think it's true that most courts -- I think there
4 are a handful of courts that might have gone this way for
5 various reasons. But we don't think it would be appropriate
6 here.

7 But, again, in the interest of not debating it right now
8 unless you have specific questions, we'd like to just I guess
9 ask the Court for a briefing schedule on it. And we've agreed
10 to simultaneous briefing.

11 I don't know if we discussed -- and I don't want to put
12 Mr. Schmidt in a bad position here -- a reply, which I would
13 also propose would be maybe briefly after you get simultaneous
14 briefing, we would do that simultaneous as well.

15 **MR. SCHMIDT:** We would not oppose that.

16 **THE COURT:** Well, I have a lot going on in January,
17 and you've added the interlocutory appeal issues. It doesn't
18 seem to me that this is overly urgent. I've got a criminal
19 trial, and then I have a Google trial.

20 So my preference -- I'm happy to have you brief it, but,
21 frankly, I'm going to want some time to think about it. And
22 it may not make sense to -- unless there's some reason to
23 discuss it, my preference is to deal with this in February as
24 opposed January.

25 **MR. SCHMIDT:** What I would request on that is there's

1 probably no deep magic to doing it in January versus February.
2 Our concern is we are now into discovery on -- thinking about
3 how the litigation is going to progress in terms of discovery,
4 this is relevant to that question.

5 If we can brief it on the timetable the parties have
6 proposed, and if that doesn't work for the Court in terms of
7 resolving it, it can roll to February, is what we would
8 propose.

9 **MR. SEEGER:** We could also ask you to just deny this
10 bad idea right from the bench, Judge.

11 **MR. SCHMIDT:** Now we're arguing it, Your Honor.

12 **THE COURT:** Let's do this.

13 And how many pages do you want to file?

14 **MR. SCHMIDT:** I think we could actually be pretty
15 terse in -- in what we file. I think we had talked about five
16 single-spaced pages. We could be pretty focused in what we
17 file.

18 **THE COURT:** Okay.

19 Five single-spaced pages due January 15th.

20 You can have the two-page rebuttal. It's due noon on the
21 19th.

22 **MR. SEEGER:** Okay.

23 **MR. SCHMIDT:** Is that also single-spaced, Your Honor?

24 **THE COURT:** Yes.

25 **MR. SCHMIDT:** Okay. Thank you.

1 **THE COURT:** Okay. Standing order, any footnotes must
2 truly be footnotes and not additional argument on all things
3 and must be 12-point font.

4 If I have to get glasses to read it, which is anything
5 smaller than 12-point, I won't read it.

6 **MR. SCHMIDT:** Understood, Your Honor. Thank you.

7 **THE COURT:** You're on notice.

8 Sir?

9 **MR. LEWIS:** Your Honor, Chris Lewis for the States.

10 We -- we would as -- as far as this goes -- both
11 plaintiffs and defendants have been at this before we joined
12 the case. But to the extent that these agreements keep, you
13 know, potentially affecting claims that are our cases, we'd
14 like to be more involved in these.

15 And as far as this particular one goes, we would like some
16 time to respond to the extent that any of it does affect our
17 claims.

18 We would ask for three weeks. If this is being pushed
19 into February for our response from the 15th, which I think
20 would put it the 9th of February?

21 **MR. SCHMIDT:** May I speak to that, Your Honor?

22 We're absolutely open to conferring with the States. We
23 viewed this issue as affecting just the personal injury cases
24 because those are the only cases where we've been through the
25 first round of briefing and where we have discovery open.

1 But, of course, we're willing to confer with the States
2 it. It would not be reasonable from our point of view that
3 there's kind of this additional "me too" briefing on things
4 that won't impact them down road and that we'd have to come
5 back -- until down the road and that we'd have to come back to
6 Your Honor on -- in order for it to impact them.

7 But maybe that's something we could confer with the States
8 on and figure out a way to --

9 **THE COURT:** Why don't you confer. I'm going to see
10 you on the 26th.

11 If you feel like you need to respond, then you should
12 start your response after you get it on the 15th. And then
13 I'll give you a deadline.

14 **MR. LEWIS:** Understood, Your Honor.

15 **THE COURT:** But it sounds like they've got some
16 analysis that they've shared. I'm sure they'll share it with
17 you, too. And you can let me know on the 26th whether you
18 think you need to respond in writing.

19 **MR. LEWIS:** Will do. Thanks, Your Honor.

20 **THE COURT:** Sure.

21 **MR. SCHMIDT:** Thank you, Your Honor.

22 **MR. SEEGER:** Thank you.

23 **THE COURT:** Someone said "actually"? No?

24 **MR. SEEGER:** No.

25 **THE COURT:** Okay.

1 All right. That's all I had on my agenda.

2 What -- did anybody have other things on their agenda?

3 **MR. SCHMIDT:** Not on the defense side, Your Honor.

4 **MS. HAZAM:** Not for plaintiffs, Your Honor.

5 **THE COURT:** Excellent. Again, remember this moment.

6 Okay. Let's -- then I will wish everybody a wonderful
7 holiday.

8 We'll get an order out. Have fun with Judge Kang tomorrow
9 and be safe and enjoy your families during the holidays,
10 right?

11 **MR. SCHMIDT:** Thank you, Your Honor.

12 **MS. HAZAM:** Thank you, Your Honor.

13 **MR. SCHMIDT:** Happy holidays.

14 **MS. HAZAM:** Thank you.

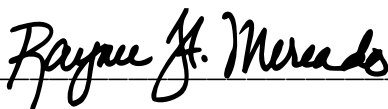
15 **THE CLERK:** Court is adjourned.

16 (Proceedings were concluded at 11:14 A.M.)

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action.



Raynee H. Mercado, CSR, RMR, CRR, FCRR, CCRR

Monday, December 18, 2023